

REMARKS

This responds to the Office Action mailed on November 28, 2007.

Claims 1, 19, and 37 are amended, and no claims are cancelled or added; as a result, claims 1-37 remain pending in this application.

§102 Rejection of the Claims

Claims 1, 11-13, 17-19, 29-31 and 35-37 were rejected under 35 U.S.C. § 102(e) for anticipation by Hoke (U.S. 6,561,908).

Hoke describes a wagering game machine having a metronome system that can be adapted to play a plurality of sound recording simultaneously, such as by changing or switching sound recordings when a game event occurs (*see*, col. 3, ln. 34-43). Sound causing game events include making a losing selection in a game, winning a value, or reaching a bonus game event (*see, e.g.*, col. 8., ln. 20, 25, and 65-67).

In contrast, the pending claims as amended recite that the audio element tracks of an audio track are selected randomly or pseudo-randomly, such as by use of a random selection method or use of a preordered list. The amended claims also recite that the audio tracks comprise a part of the same song. More specifically, the amended claims recite a wagering game that changes the component audio tracks of a song based on random or pseudorandom selection rather than playing different or unrelated sounds based on game events, and makes the change to prevent user boredom and fatigue from hearing a song repeated rather than using different sounds to indicate a game event as is the case in Hoke.

Because Hoke fails to consider random selection of audio element tracks but instead plays its various tracks to indicate specific game events associated with the tracks, and because the audio tracks of Hoke are not part of the same song but are distinct audio tracks used to indicate distinct game events, the pending claims as amended are believed to be patentably distinct from the prior art. Reexamination and allowance of these claims, and of their dependents, is therefore respectfully requested.

§103 Rejection of the Claims

Claims 16 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke in view of Thagard et al. (U.S. 6,215,737; hereinafter “Thagard”).

Claims 2 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke in view of Koenig et al. (U.S. 6,729,618; hereinafter “Koenig”).

Claims 3-10, 14-15, 21-28 and 32-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke in view of Koenig, and further in view of Kay (U.S. 6,087,578).

These claims depend from claims believed to be in condition for allowance as explained above, and are therefore allowable as dependent on allowable base claims. Reexamination and allowance is therefore respectfully requested.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 349-9581 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 349-9581

Date Feb. 12 08 By 
John M. Dahl
Reg. No. 44,639

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12 day of February 2008.

Charley M. Corrin
Name


Signature